



Montana Board of Environmental Review

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AGENDA

BOARD OF ENVIRONMENTAL REVIEW

FRIDAY, SEPTEMBER 15, 2006

METCALF BUILDING, ROOM 111

1520 EAST SIXTH AVENUE, HELENA, MONTANA

NOTE: Individual agenda items are not assigned specific times. For public notice purposes, the Board will begin the meeting at the time specified. However, the Board might not address the specific agenda items in the order they are scheduled. Persons with disabilities, who need an accommodation in order to participate in this meeting, should contact the Board Secretary at (406) 444-2544.

9:00 A.M.

I. ADMINISTRATIVE ITEMS

A. REVIEW AND APPROVE MINUTES

1. June 2, 2006, regularly scheduled Board meeting.
2. June 21, 2006, teleconference meeting regarding the Metal Mine Reclamation Act rules.
3. July 21, 2006, regularly scheduled Board meeting.

II. BRIEFING ITEMS

A. CONTESTED CASE UPDATE:

1. Cases assigned to Hearing Officer Katherine Orr
 - a. **In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act (BER 2002-09 MM).** The Hearing Examiner, upon request of the parties, has vacated the hearing schedule and placed the case on hold until further notice of one or more of the parties or upon initiative of the Hearing Examiner.
 - b. **In the matter of Violations of the Water Quality Act by ASARCO, Inc., (BER 2005-09 WQ).** The Board received a request for hearing regarding an Administrative Penalty Order issued by DEQ for the alleged failure to pay annual permit fees on the MGWPCS permit for discharges from the Paymaster Mine Adit located in Lewis and Clark County. DEQ claims ASARCO should have paid permit fees for a permit that ASARCO argues should have been terminated in 2002. The parties requested until July 19, 2005, to submit a schedule or settlement papers and Hearing Examiner Tom Bowe granted the request. On August 24, 2005, Hearing Examiner Katherine Orr issued a notice of Assumption of Jurisdiction and upon review of the Department's proposed hearing schedule, set a date for a Prehearing Conference of December 14, 2005, at which time a date for the hearing will be determined. The hearing examiner issued a Stay of Proceedings on January 19, 2006, upon the notification of the Department of the bankruptcy proceeding.
 - c. **In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00 (BER 2003-04 AQ).** On June 6, 2005, the Montana Supreme Court remanded an appeal to the District Court. On June 15, 2005, the district Court remanded the case to the Board. The Board was to decide whether to make a new decision based on the record or to receive additional evidence. On July 29, 2005, the Board issued an Order Staying Contested Case Proceedings indefinitely. On August 24, 2005, Hearing Examiner Katherine Orr issued an Assumption of Jurisdiction referencing the Order Staying Contested Case Proceedings.

- d. **In the matter of the request for hearing of Jay Gasvoda, d/b/a Gasvoda Construction, BER 2005-17 OC, regarding the Notice of Violation and Statement of Proposed Penalty** issued by DEQ on September 14, 2005. On October 6, 2005, the Board received the appeal letter from Mr. Gasvoda appealing the issuance of a Notice of Violation and Statement of Proposed Penalty concerning an opencut mining operation. A First Prehearing Order was issued on November 7, 2005. The Department filed a Motion to Strike Discovery, to Compel Discovery or for Sanctions on January 23, 2006. This motion was unopposed. The Hearing Examiner issued an order concerning discovery on April 21, 2006. In this order, the Respondent is ordered to answer discovery by May 5, 2006. The parties have been ordered to submit a proposed schedule for hearing and prehearing dates by May 10, 2006. Mr. Gasvoda did not respond to the Order Concerning Discovery. An Order Imposing Sanctions and Setting a Hearing Schedule was issued on June 9, 2006. On August 21, 2006, the Department filed a Motion for Summary Judgment.
- e. **In the matter of the request for hearing of James McDonald, d/b/a McDonald Ready Mix, regarding violations of the Opencut Mining Act, BER 2006-05 OC.** The Board received a request for hearing March 10, 2006. A First Prehearing Order was issued April 3, 2006. A Scheduling Order was issued July 28. A hearing is scheduled for December 8, 2006.
- f. **In the matter of the request for hearing of Bruce Wood, d/b/a Big Sky Ready Mix, regarding a notice of violations of the Opencut Mining Act, BER 2006-06 OC.** The Board received the request for hearing March 16, 2006. A Scheduling Order was issued on April 24, 2006. A hearing is set for November 14, 2006. The Department has filed a Motion to Dismiss or in the Alternative for Other Relief on May 5, 2006. This motion was denied on June 6, 2006.
- g. **In the matter of the request for hearing of Tom and Noel Gorton, d/b/a Creston Topsoil, regarding a notice of violations of the Opencut Mining Act, BER 2006-07 OC.** The Board received the request for hearing March 21, 2006. A Scheduling Order was issued on April 24, 2006. A hearing is set for December 5, 2006.
- h. **In the matter of the request for hearing of Kountry Korner Enterprises, d/b/a Kountry Korner Café, regarding violations of the Montana Public Water Supply Laws, BER 2006-09 PWS.** The Board received the request for hearing March 27, 2006. A Prehearing Order was issued on May 9, 2006. A Scheduling Order was issued on June 6, 2006. A hearing will be held on November 28, 2006.
- i. **In the matter of the Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.** The parties were given until January 10, 2006, to submit a proposed schedule for prehearing matters and the hearing. The permittee, Bull Mountain filed a Motion to Intervene on January 9, 2006. The Hearing Officer issued a Scheduling Order on January 30, 2006. The final prehearing conference is set for May 26, 2006. The Department submitted a Motion to Dismiss on January 26, 2006. The MEIC filed an Answer Brief on February 24, 2006. Bull Mountain filed a Brief in Support of the DEQ's Motion to Dismiss on February 24, 2006. The parties filed a Joint Stipulation to Stay Prehearing Schedule on March 6, 2006. There was a hearing on the Motion to Dismiss on March 30, 2006. The Board will be reviewing the Hearing Examiner's proposed order addressing the Motion to Dismiss, contained in the Board packet. The parties have requested a hearing in January 2007.
- j. **In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.** The Board received the appeal May 23, 2006. A

Prehearing Order was issued on June 9, 2006. The parties have requested until September 29, 2006, to submit a schedule, to allow settlement discussions to continue.

- k. **In the matter of the request for hearing of Michael Golembeski regarding the permit process of the Paveco Gravel Pit, BER 2006-14 OC.** The Board received the request May 26, 2006. A Prehearing Order was issued on June 9, 2006. The parties submitted a Proposed Prehearing Schedule on June 23. On July 18, the Department filed a Motion to Dismiss. The Petitioner filed a response on August 10 and the Department's response was filed August 11.
- l. **In the matter of the request for hearing of the Teton County Airport Commission regarding violations of the Montana Underground Storage Tank Act at the Choteau Airport, BER 2006-15 UST.** The Board received the request for hearing June 2, 2006. A Prehearing Order was issued on June 9, 2006. A Proposed Prehearing Schedule was submitted by the parties on June 23, 2006. Hearing Examiner Katherine Orr issued a Scheduling Order on July 28, 2006. A hearing is scheduled for January 8, 2007.
- m. **In the matter of the request for hearing of U.S. Customs and Border Protection regarding a notice of violation concerning the Del Bonita Border Station, BER 2006-16 PWS.** The Board received the request for hearing June 8, 2006. A First Prehearing Order was issued August 4 and a Proposed Schedule was submitted by the parties on August 21, 2006.

B. OTHER BRIEFING ITEMS

1. Aluminum Smelter Air Pollution Control Maintenance Rule - The department will provide an update on the U.S. Environmental Protection Agency's disapproval of Montana's Aluminum Smelter Air Pollution Control Maintenance Rule and Columbia Falls Aluminum Company's request to perform maintenance under this rule.

II. ACTION ITEMS

A. REPEAL, AMENDMENT OR ADOPTION OF FINAL RULES:

1. The Board will consider adoption, amendment or rejection of the Rules noticed at MAR 17-246 p. 1112 (ARM 17.8.740 and 17.8.767 and New Rules I and II) pertaining to control of mercury emissions from facilities that combust coal to generate electricity for sale and adoption of the cap and trade provisions of the federal Clean Air Mercury Rule. The Board conducted public hearings at Great Falls on May 31, 2006 and in Billing on June 1, 2006. The public comment period ended July 6, 2006. Numerous comments were received at the hearing and during the public comment period.
2. The Board will consider adoption, amendment or rejection of the Rules noticed at MAR 17-248 p. 1504 (ARM 17.8.504, ARM 17.8.505 and 17.8.514) pertaining to the annual adjustment of air quality application, operation and open burning fees. Presiding Officer Katherine Orr conducted the public hearing on August 8, 2006. No public comments were received at the hearing. The public comment period ended August 15, 2006. One public comment supporting the rule was received within the comment period. The DEQ recommends adoption of the rule amendments as proposed.

B. INITIATION OF RULEMAKING AND APPOINTMENT OF HEARING OFFICER:

The Department will propose that the Board concur in its recommendation to initiate rulemaking to:

1. Amend ARM 17.30.617 to designate the mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW) and to amend ARM 17.30.638 to add a new sub-section clarifying that discharges to

ground water with a direct hydrologic connection to an ORW are within the statutory mandate prohibiting any permanent change in the water quality of an ORW resulting from point source discharges.

C. FINAL ACTION ON APPEALS:

1. **In the matter of the request for hearing of Thomas M. Thomas, Pointe of View Ranch, regarding a notice of violations of the Water Quality Act, BER 2006-11 WQ.** The Board received the request for hearing April 26, 2006. On July 28, 2006, the parties submitted a Stipulation for Dismissal. An Order of Dismissal will be presented for the Board's approval.
2. **In the matter of the request for hearing of Michael and Kimberly Thomas, regarding DEQ's approval of the Blahnik Construction, Inc.'s JCSL North Gravel Pit.** The Board received the request for hearing on February 17, 2006. A First Prehearing Order was issued March 8, 2006. The parties submitted a Proposed Prehearing Schedule on March 23, 2006. A hearing will be held on November 14, 2006. On July 18, the petitioners filed a letter withdrawing the request for hearing. On July 24, 2006, the Department filed a Motion to Dismiss. Hearing Examiner Katherine Orr issued an Order on Motion to Dismiss. An order dismissing the case will be presented for the Board's approval.

D. NEW CONTESTED CASE APPEALS:

1. **In the matter of the request for hearing of Robert Klein, Clancy School District No. 1, BER 2006-17 PWS, regarding violations of the Montana Public Water Supply Laws.** The Board received the request for hearing on August 25, 2006. The Board may appoint a permanent hearings examiner or decide to hear the matter.

III. GENERAL PUBLIC COMMENT

Under this item, members of the public may comment on any public matter within the jurisdiction of the Board that is not otherwise on the agenda of the meeting. Individual contested case proceedings are not public matters on which the public may comment.

IV. ADJOURNMENT